Equality of Opportunity and Freedom from Discrimination

MHR Connections

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THE MANITOBA HUMAN RIGHTS COMMISSION

LA COMMISSION DES DROITS DE LA PERSONNE DU MANITOBA

www.manitobahumanrights.ca

The DREAM Conference is coming

The DREAM Human Rights Conference has goals and they are very big ones: to help students DISCOVER their rights and responsibilities; to make sure they REALIZE the power of one to impact change; to learn to EXPRESS themselves; to be confident enough to ACT and speak out to help others and finally; to take home what they have learned and MOTIVATE others. In other words the goal is to DREAM.

According to the Conference co-chairs Pam Roberts and Lorraine Lambert the students who are attending the Human Rights Conference will participate in relevant workshops, listen to inspiring speakers, play interactive games and using their own creativity, take a personal human rights message home with them. At the end of the day students learn about discrimination and their rights and responsibilities under

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"I'm very excited to welcome Keith Macpherson to our conferences... his message of respect starts with respecting yourself." Pam Roberts, co-chair of the DREAM Conferences

Known for his inspirational spirit, motivational voice and dynamic presence in the capacity of musician, yoga instructor, life coach, energy worker, public speaker and author, Keith Macpherson has been connecting and inspiring thousands of people around the world in his own unique way for several years.

In April 2014 this multi-talented and charismatic person will have dual roles at the DREAM Human Rights Youth Conference. He is the keynote speaker and entertainer in both Winnipeg and Shilo.

As a strong and articulate voice for social change, self love and personal transformation, Keith will be pulling all of his talents together to deliver a compelling, meaningful and relevant presentation which will inspire students to see beyond limits and to realize that their dreams (whether they be personal goals or a society free from harassment and discrimination) are within reach.

The Rights Connection
by Yvonne Peters - Chairperson

Reasonable accommodation in human rights law does not often get the publicity that cases of harassment or racism receive. But once in awhile something happens and the public opinion spotlight shifts to this somewhat misunderstood form of discrimination.

What brought reasonable accommodation to the public's attention was the story of a York University professor who refused to accommodate a request from an online student. The student did not want to take part in a project held at the university and requested he be excused on religious grounds. He claimed his religion restricted his interaction with women. The professor refused the request for accommodation but the university administration later stated the student should have been accommodated.

While we do not know enough about the facts of the case to provide specific comment, it does present an opportunity to look at the concept of reasonable accommodation as a protection under Manitoba's Human Rights Code (*The Code*).

Reasonable accommodation means changing the ways things are usually done. The changes should take into account the specific needs of the person requesting the accommodation, as long as those needs are based on a protected ground such as sex, age, disability or religion listed in *The Code*. It should be noted that accommodation is not meant to be "ideal," just reasonable. The process deals with needs, not wants.

The Code provides reasonable accommodation for those with special needs. Many cases are not a question of balancing rights but rather recognizing that simple changes can result in greater equality of opportunity and participation in employment, services and housing of persons with special needs based on protected grounds.

Balancing rights are more difficult to navigate. In Manitoba, reasonable accommodation that results in violations of protected rights of other employees, customers or tenants may be unreasonable.

In all cases, however, there are no set rules as each one requires individualized assessment and the competing positions have to be analyzed. In human rights no protected ground trumps another, and tipping the balance one way over another may come down to which party would experience the greater discrimination.

For more information about reasonable accommodation visit www.manitobahumanrights.ca.

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Manitoba's Human Rights Code. All of the sessions are created to engage the student in a fun and relevant way.

According to Pam Roberts, "The two days spent with Manitoba students and teachers are the best working days of the year. Their enthusiasm and ideas make me very optimistic about the advances they will make with human rights issues." This year the DREAM Conference is also adding something special for the teachers. A Teachers' Resource Kit on Discrimination and Human Rights will be given to every teacher at the conference. The Kit has many of the tools (information, links, and games) used during the conference.

The conferences are April 15, 2014 in Shilo, Manitoba and the following day, April 16, 2014 in Winnipeg.

The youth conference is free and lunch is provided. Students in grades 7, 8 and 9 are welcomed and each school can send up to six participants. Teachers and students are advised to register early, as the number of of participants is limited and capacity is expected to be reached quickly. You can register on line on the Commission's website at www.manitobahumanrights.ca.

Settlement

Harassment in the workplace takes many forms

Harassment under *The Human Rights Code* includes a course of abusive and unwelcome conduct or comment made on the basis of any of the protected grounds listed in the Code such as sex, religion, age and ancestry. The conduct or comment may be verbal or written, emails, jokes, photographs or graphical depictions. A "course of conduct" implies more than one event and some degree of repetition.

In this example of a pre-investigation mediation settlement, a woman who filed a complaint based on harassment claimed a manager ridiculed her physical appearance, verbally belittled her, and referred to her as a loser. After consulting with a lawyer, she claims she was told by a senior Vice-President that the manager's comments did not amount to discrimination.

Soon after she was removed from her position.

After she filed a formal complaint she was offered the opportunity to take part in pre-investigation mediation. This is an early option in the complaint process and takes place after a formal complaint has been registered and served on the respondent (in this case the company) but before an investigation. There is no assessment as to whether or not the complaint is valid and a formal written response to the complaint is not requested. During this process the mediator assists both parties to arrive at a settlement.

The mediator will focus the parties on any issues raised in the complaint to try and get the issue resolved. The mediator relies on previous adjudication decisions or other law to guide the parties to consider what evidence they each have to support their positions. This evidence will be required if the complaint goes to an investigation or ultimately to a public adjudication hearing. The mediator is impartial and does not give legal advice but may provide information to the parties as to what an investigator or adjudicator might consider.

In this case both parties agreed to the following settlement. The woman received $10,000 in respect of a retirement allowance, less the statutory deductions; $8,000 in respect to general damages and; $5000 towards her legal fees.

Ruling protects privacy and confidentiality

A decision from the Court of Queen's Bench has the Manitoba Human Rights Commission feeling confident in the integrity of their investigations.

"This decision reinforces the privacy and confidentiality of those people who come forward as witnesses in harassment cases," says Isha Khan Legal Counsel for the Commission. "It also upholds the integrity of the Commission's investigative process."

The Commission had appealed a ruling by a Master of Court who had determined that an investigator's entire file should be produced as part of the record of the Board of Commissioners' decision to send a complaint to an adjudication hearing, even though the entire file was not reviewed by the Board when they made their decision.

The case involved a complaint of sexual harassment (Metaser v Jewish Community Campus of Winnipeg Inc.). The Jewish Community Campus (JCC) argued that the investigation was not neutral nor thorough in part because two witnesses that would have supported their position were not interviewed by the investigator. The JCC also claimed that the Commission's refusal to release the contents of the investigation file to them was unfair and that the investigator's report which summarized his findings was not enough.

Ms Khan had argued that the Commission had already produced all of the documents that were given to the Board of Commissioners. The JCC was, in her view, unable to demonstrate that there were any other documents which would likely, or at least arguably, be relevant to the Board's decision.
In her written decision Justice Colleen Suche wrote that the Commission is "an independent and highly specialized tribunal, expert in its processes, procedures, and the substantive law in the area of its decision making."

The decision confirms some important principles underlying the Commission's processes. The Commission's role is a screening one; to determine if there is enough evidence to warrant a hearing where the merits of the complaint are decided by an independent adjudicator. The Board makes this determination based on the investigator's report alone, which allows the investigator to protect the confidentiality of witnesses until the complaint goes to a hearing before an Adjudicator.

February 13, 2014
Harassment in Today's Workplace
Half day seminar
(Cost $125 includes lifestyle break)

Register online: www.manitobahumanrights.ca